



# Current Developments in Municipal Law

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## Legislation Book 1

**2018**

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# LEGISLATION

PLEASE NOTE THIS COMPILATION WAS MADE FROM ELECTRONIC  
(NOT OFFICIAL) EDITIONS OF MASSACHUSETTS ACTS AND  
RESOLVES (SESSION LAWS) AND BILLS FILED FOR 2017-2018  
SESSION

## 2018 LEGISLATION

### **CHAPTER 121 – MINIMUM WAGE AND PAID FAMILY LEAVE**

*Effective January 1, 2019, unless otherwise noted*

Starting on January 1, 2021, Massachusetts employees will be entitled to up to 12 weeks of paid leave to care for a sick family member or newborn, and up to 20 weeks of paid medical leave to attend to serious health conditions of their own.

In addition, the state’s hourly minimum wage will increase from its current \$11.00 over 5 years. It increases to \$12.00 on January 1, 2019. It increases by \$.75 on every January 1 thereafter until it reaches \$15.00 on January 1, 2023.

### **CHAPTER 121 OF THE ACTS OF 2018 (EXCERPT) An Act Relative to Minimum Wage, Paid Family Medical Leave and the Sales Tax Holiday.**

*Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same as follows:*

...

SECTION 17. Section 1 of chapter 151 of the General Laws, as appearing in the 2016 Official Edition, is hereby amended by striking out, in line 6, the figure “\$11.00” and inserting in place thereof the following figure:- \$12.00.

SECTION 18. Said section 1 of said chapter 151 is hereby further amended by striking out the figure “\$12.00”, inserted by section 17, and inserting in place thereof the following figure:- \$12.75.

SECTION 19. Said section 1 of said chapter 151 is hereby further amended by striking out the figure “\$12.75”, inserted by section 18, and inserting in place thereof the following figure:- \$13.50.

SECTION 20. Said section 1 of said chapter 151 is hereby further amended by striking out the figure “\$13.50”, inserted by section 19, and inserting in place thereof the following figure:- \$14.25.

SECTION 21. Said section 1 of said chapter 151 is hereby further amended by striking out the figure “\$14.25”, inserted by section 20, and inserting in place thereof the following figure:- \$15.00.

...

SECTION 29. The General Laws are hereby amended by inserting after chapter 175L the following chapter:-

#### CHAPTER 175M. FAMILY AND MEDICAL LEAVE

Section 1. For the purposes of this chapter, the following words shall have the following meanings, unless the context clearly requires otherwise:-

“Average weekly wage”, shall have the same meaning as provided in subsection (w) of section 1 of chapter 151A; provided, however, that “average weekly wage” shall be calculated using earnings from the base period, as that term is defined in subsection (a) of said section 1 of said chapter 151A; and provided further, that in the case of a self-employed individual, “average weekly wage” shall mean one twenty-sixth of the total earnings of the self-employed individual from the 2 highest quarters of the 12 months preceding such individual’s application for benefits under this chapter.

“Benefit year”, the period of 52 consecutive weeks beginning on the Sunday immediately preceding the first day that job-protected leave under this chapter commences for the covered individual.

“Child”, a biological, adopted or foster child, a stepchild or legal ward, a child to whom the covered individual stands in loco parentis, or a person to whom the covered individual stood in loco parentis when the person was a minor child.

“Contributions”, the payments made by an employer, a covered business entity, an employee or a self-employed individual to the Family and Employment Security Trust Fund, as required by this chapter.

“Covered business entity”, a business or trade that contracts with self-employed individuals for services and is required to report the payment for services to such individuals on IRS Form 1099-MISC for more than 50 per cent of its workforce.

“Covered individual”, either: (i) an employee who meets the financial eligibility requirements of subsection (a) of section 24 of chapter 151A, provided that all such employment has been with an employer in the commonwealth; (ii) a self-employed individual who has: (A) elected coverage under subsection (j) of section 2 of this chapter and (B) reported earnings to the department of revenue from self-employment that meet the financial eligibility requirements of subsection (a) of section 24 of chapter 151A, as if the individual were an employee; or (iii) a former employee who has: (A) met the financial eligibility requirements of subsection (a) of section 24 of chapter 151A at the time of the former employee’s separation from employment, provided that all such employment has been with an employer in the commonwealth; and (B) been separated from employment for not more than 26 weeks at the start of the former employee’s family or medical leave.

“Covered servicemember”, either: (i) a member of the Armed Forces, as defined in section 7 of chapter 4, including a member of the National Guard or Reserves, who is (A) undergoing medical treatment, recuperation or therapy; (B) otherwise in outpatient status; or (C) is otherwise on the temporary disability retired list for a serious injury or illness that was incurred by the member in the line of duty on active duty in the Armed Forces, or a serious injury or illness that existed before the beginning of the member's active duty and was aggravated by service in the line of duty on active duty in the Armed Forces; or (ii) a former member of the Armed Forces,

including a former member of the National Guard or Reserves, who is undergoing medical treatment, recuperation or therapy for a serious injury or illness that was incurred by the member in line of duty on active duty in the Armed Forces, or a serious injury or illness that existed before the beginning of the member's active duty and was aggravated by service in line of duty on active duty in the Armed Forces and manifested before or after the member was discharged or released from service.

“Department”, the department of family and medical leave established in section 8.

“Director”, the director of the department of family and medical leave.

“Domestic partner”, a person not less than 18 years of age who: (i) is dependent upon the covered individual for support as shown by either unilateral dependence or mutual interdependence that is evidenced by a nexus of factors including, but not limited to: (A) common ownership of real or personal property; (B) common householding; (C) children in common; (D) signs of intent to marry; (E) shared budgeting; and (F) the length of the personal relationship with the covered individual; or (ii) has registered as the domestic partner of the covered individual with any registry of domestic partnerships maintained by the employer of either party, or in any state, county, city, town or village in the United States.

“Employee”, shall have the same meaning as provided in clause (h) of section 1 of chapter 151A; provided, however, that notwithstanding said clause (h) or any other special or general law to the contrary, “employee” shall include a family child care provider, as defined in subsection (a) of section 17 of chapter 15D.

“Employer”, shall have the same meaning as provided in subsection (i) of section 1 of chapter 151A; provided, however, that an individual employer shall be determined by the Federal Employer Identification Number; provided further, that the department of early education and care shall be deemed the employer of family child care providers, as defined in subsection (a) of section 17 of chapter 15D; provided further, that the PCA quality home care workforce council established in section 71 of chapter 118E shall be the employer of personal care attendants, as defined in section 70 of said chapter 118E; provided further, that any employer not subject to this chapter may become a covered employer under this chapter by notifying the department of family and medical leave and completing the procedure established by the department; and provided further, that a municipality, district, political subdivision or its instrumentalities shall not be subject to this chapter unless it adopts this chapter under section 10.

“Employment”, shall have the same meaning as provided by clause (k) of section 1 of chapter 151A.

“Employment benefits”, all benefits provided or made available to employees by an employer, including, but not limited to, group life insurance, health insurance, disability insurance, sick leave, annual or vacation leave, educational benefits and pensions.

“Family leave”, leave taken pursuant to paragraph (1) of subsection (a) of section 2 or pursuant to subsection (b) of said section 2.

“Family leave benefits”, wage replacement paid pursuant to section 3 and provided in accordance with section 2 to a covered individual while the covered individual is on family leave.

“Family member”, the spouse, domestic partner, child, parent or parent of a spouse or domestic partner of the covered individual; a person who stood in loco parentis to the covered individual when the covered individual was a minor child; or a grandchild, grandparent or sibling of the covered individual.

“Health care provider”, an individual licensed to practice medicine, surgery, dentistry, chiropractic, podiatry, midwifery or osteopathy or any other individual determined by the department to be capable of providing health care services.

“Medical leave”, leave taken pursuant to paragraph (2) of subsection (a) of section 2.

“Medical leave benefits”, wage replacement paid pursuant to section 3 and provided in accordance with section 2 to a covered individual while the covered individual is on medical leave.

“Qualifying exigency”, a need arising out of a covered individual’s family member’s active duty service or notice of an impending call or order to active duty in the Armed Forces, including, but not limited to, providing for the care or other needs of the military member’s child or other family member, making financial or legal arrangements for the military member, attending counseling, attending military events or ceremonies, spending time with the military member during a rest and recuperation leave or following return from deployment or making arrangements following the death of the military member.

“Self-employed individual”, a sole proprietor, member of a limited liability company or limited liability partnership or an individual whose net profit or loss from a business is required to be reported to the department of revenue; provided, however, that such individual resides in the commonwealth.

“Serious health condition”, an illness, injury, impairment or physical or mental condition that involves (i) inpatient care in a hospital, hospice or residential medical facility; or (ii) continuing treatment by a health care provider.

“State average weekly wage”, the average weekly wage in the commonwealth as calculated under subsection (a) of section 29 of chapter 151A and determined by the commissioner of unemployment assistance.

“Trust fund”, the Family and Employment Security Trust Fund established in section 7.

“Wages”, shall have the same meaning as provided in clause (s) of section 1 of chapter 151A.

“Weekly benefit amount”, the amount of wage replacement paid to a covered individual on a weekly basis while the covered individual is on family or medical leave, as provided in section 3.

Section 2. (a)(1) Family leave shall be available to any covered individual for any of the following reasons: (i) to bond with the covered individual's child during the first 12 months after the child's birth or the first 12 months after the placement of the child for adoption or foster care with the covered individual; (ii) because of any qualifying exigency arising out of the fact that a family member is on active duty or has been notified of an impending call or order to active duty in the Armed Forces; or (iii) in order to care for a family member who is a covered servicemember.

(2) Medical leave shall be available to any covered individual with a serious health condition.

(b) Family leave shall be available to any covered individual to care for a family member with a serious health condition.

(c)(1) A covered individual shall not be eligible for more than 12 weeks of family leave in a benefit year; provided, however, that a covered individual taking family leave in order to care for a covered servicemember pursuant to clause (iii) of paragraph (1) of subsection (a) shall not be eligible for more than 26 weeks of family leave in a benefit year. A covered individual shall not be eligible for medical leave for more than 20 weeks in a benefit year. A covered individual shall not take more than 26 weeks, in the aggregate, of family and medical leave under this chapter in the same benefit year. Nothing in this section shall prevent a covered individual from taking a medical leave during pregnancy or recovery from childbirth if supported by documentation by a health care provider that is immediately followed by family leave, in which case the 7 day waiting period for family leave shall not be required.

(2)(A) Leave under clause (i) of paragraph (1) of subsection (a) shall not be taken by an employee intermittently or on a reduced leave schedule unless the employee and the employer of the employee agree otherwise. Leave under clause (iii) of paragraph (1) of subsection (a) or

under paragraph (2) of said subsection (a) or under subsection (b), may be taken intermittently or on a reduced leave schedule by an employee when medically necessary. Leave under clause (ii) of said paragraph (1) of said subsection (a) may be taken intermittently or on a reduced leave schedule by an employee.

(B) Leave under paragraphs (1) or (2) of subsection (a), or under subsection (b) of this section may be taken intermittently or on a reduced leave schedule by a self-employed individual or former employee.

(C) The taking of leave intermittently or on a reduced leave schedule pursuant to this paragraph shall not result in a reduction in the total amount of leave to which the covered individual is entitled under this chapter.

(d) While on family or medical leave, a covered individual shall receive a weekly benefit amount, as provided in section 3.

(e) An employee who has taken family or medical leave shall be restored to the employee's previous position or to an equivalent position, with the same status, pay, employment benefits, length-of-service credit and seniority as of the date of leave. An employer shall not be required to restore an employee who has taken family or medical leave to the previous or to an equivalent position if other employees of equal length of service credit and status in the same or equivalent positions have been laid off due to economic conditions or other changes in operating conditions affecting employment during the period of leave; provided, however, that the employee who has taken leave shall retain any preferential consideration for another position to which the employee was entitled as of the date of leave.

(f) The taking of family or medical leave shall not affect an employee's right to accrue vacation time, sick leave, bonuses, advancement, seniority, length-of-service credit or other employment benefits, plans or programs. During the duration of an employee's family or medical leave, the employer shall continue to provide for and contribute to the employee's employment-related health insurance benefits, if any, at the level and under the conditions coverage would have been provided if the employee had continued working continuously for the duration of such leave.

(g) Subsections (e) and (f) shall not apply to a self-employed individual taking family or medical leave under this chapter or a person who was a former employee who satisfies the conditions set forth in clause (iii) of the definition of "Covered individual" in section 1 when that person began taking family or medical leave under this chapter.

(h)(1) This chapter shall not: (i) obviate an employer's obligations to comply with any company policy, law or collective bargaining agreement that provides for greater or additional rights to leave than those provided for by this chapter; (ii) in any way curtail the rights, privileges or remedies of any employee under a collective bargaining agreement or employment contract; or (iii) be construed to allow an employer to compel an employee to exhaust rights to any sick, vacation or personal time prior to or while taking leave under this chapter.

(2) An employer may require that payment made pursuant to this chapter be made concurrently or otherwise coordinated with payment made or leave allowed under the terms of disability or family care leave under a collective bargaining agreement or employer policy such that the employee will receive the greater of the various benefits that are available for the covered reason. Any leave provided under a collective bargaining agreement or employer policy that is used by the employee for a covered reason and paid at the same or higher rate than leave available under this chapter shall count against the allotment of leave available under this chapter. The employer shall give employees written notice of this requirement.

(i) Leave taken under this chapter shall run concurrently with leave taken under section 105D of chapter 149 or under the Family and Medical Leave Act of 1993, codified at 29 U.S.C. section 2611, et seq. Employees who take leave under this chapter while ineligible for leave

under the Family and Medical Leave Act of 1993 may take leave under the Family and Medical Leave Act of 1993 in the same benefit year only to the extent they remain eligible for concurrent leaves under this chapter.

(j) A self-employed individual may elect coverage under this chapter and become a covered individual for an initial period of not less than 3 years by filing a notice of election in writing with the department and making contributions as required in section 6 to the Family and Employment Security Trust Fund established in section 7; provided, however, that a self-employed individual who elects coverage shall not be eligible for benefits until that individual has made such required contributions for at least 2 calendar quarters of the individual's last 4 completed calendar quarters. The election shall become effective on the date of filing the notice. The department shall establish a process by which self-employed individuals may elect coverage under this chapter.

Section 3. (a) No family or medical leave benefits shall be payable during the first 7 calendar days of such leave; provided, however, that an employee may utilize accrued sick or vacation pay or other paid leave provided under an employer policy during the first 7 calendar days of such leave. Employees taking family or medical leave for which benefits are not payable under this subsection shall be entitled to the protections of subsections (e) and (f) of section 2 and section 9.

(b)(1) The weekly benefit amount for employees and self-employed individuals on family or medical leave shall be determined as follows: (i) the portion of an employee's or self-employed individual's average weekly wage that is equal to or less than 50 per cent of the state average weekly wage shall be replaced at a rate of 80 per cent; and (ii) the portion of an employee's or self-employed individual's average weekly wage that is more than 50 percent of the state average weekly wage shall be replaced at a rate of 50 per cent.

(2) The maximum weekly benefit amount calculated pursuant to paragraph (1) shall be not more than \$850 per week; provided, however, that annually, not later than October 1 of each year thereafter, the department shall adjust the maximum weekly benefit amount to be 64 per cent of the state average weekly wage and the adjusted maximum weekly benefit amount shall take effect on January 1 of the year following such adjustment.

(3) For a covered individual who takes leave on an intermittent or reduced leave schedule, the weekly benefit amount shall be prorated as determined by the department.

(c) The weekly benefit amount shall be reduced by the amount of wages or wage replacement that a covered individual receives for that period under any of the following while on family or medical leave: (i) any government program or law, including but not limited to workers' compensation under chapter 152, other than for permanent partial disability incurred prior to the family or medical leave claim, or under other state or federal temporary or permanent disability benefits law, or (ii) a permanent disability policy or program of an employer.

The weekly benefit amount shall not be reduced by the amount of wage replacement that an employee receives while on family or medical leave under any of the following conditions, unless the aggregate amount an employee would receive would exceed the employee's average weekly wage: (i) a temporary disability policy or program of an employer; or (ii) a paid family, or medical leave policy of an employer. If an employer makes payments to an employee during any period of family or medical leave that are equal to or more than the amount required under this section, the employer shall be reimbursed out of any benefits due or to become due from the trust fund for family or medical leave benefits for that employee covering the same period of time as the payments made by the employer.

Section 4. (a) Each employer and covered business entity shall post in a conspicuous place on each of its premises a workplace notice prepared or approved by the department providing notice of benefits available under this chapter. The workplace notice shall be issued in English, Spanish, Chinese, Haitian Creole, Italian, Portuguese, Vietnamese, Laotian, Khmer, Russian and any other language that is the primary language of at least 10,000 or ½ of one per cent of all residents of the commonwealth. The required workplace notice shall be in English and each language other than English which is the primary language of 5 or more employees or self-employed individuals of that workplace, if such notice is available from the department.

Each employer shall issue to each employee not more than 30 days from the beginning date of the employee's employment, the following written information provided or approved by the department in the employee's primary language: (i) an explanation of the availability of family and medical leave benefits provided under this chapter, including rights to reinstatement and continuation of health insurance; (ii) the employee's contribution amount and obligations under this chapter; (iii) the employer's contribution amount and obligations under this chapter; (iv) the name and mailing address of the employer; (v) the identification number assigned to the employer by the department; (vi) instructions on how to file a claim for family and medical leave benefits; (vii) the mailing address, email address and telephone number of the department; and (viii) any other information deemed necessary by the department. Delivery is made when an employee provides written acknowledgement of receipt of the information, or signs a statement indicating the employee's refusal to sign such acknowledgement.

Each covered business entity shall provide to each self-employed individual with whom it contracts, at the time such contract is made, the following written information provided or approved by the department in the self-employed individual's primary language: (i) an explanation of the availability of family and medical leave benefits provided under this chapter and the procedures established by the department for self-employed individuals to become covered individuals; (ii) the self-employed individual's contribution amount and obligations under this chapter if the self-employed individual were to become a covered individual; (iii) the covered business entity's contribution amount and obligations under this chapter; (iv) the name, mailing address and email address of the covered business entity; (v) the identification number assigned to the covered business entity by the department; (vi) instructions on how to file a claim for family and medical leave benefits; (vii) the address and telephone number of the department; and (viii) any other information deemed necessary by the department. Delivery is made when a self-employed individual provides written acknowledgement of receipt of the information, or signs a statement indicating the self-employed individual's refusal to sign such acknowledgement.

An employer or covered business entity that fails to comply with this subsection shall be issued, for a first violation, a civil penalty of \$50 per employee and per self-employed individual with whom it has contracted, and for each subsequent violation, a civil penalty of \$300 per employee or self-employed individual with whom it has contracted. The employer or covered business entity shall have the burden of demonstrating compliance with this subsection.

(b) An employee shall give not less than 30 days' notice to the employer of the anticipated starting date of the leave, the anticipated length of the leave and the expected date of return or shall provide notice as soon as practicable if the delay is for reasons beyond the employee's control. If an employer fails to provide notice of this chapter as required under subsection (a), the employee's notice requirement shall be waived.

Section 5. (a)(1) Covered individuals shall file a benefit claim pursuant to regulations issued by the department. If a claim is filed more than 90 calendar days after the start of leave, the covered individual may receive reduced benefits. All claims shall include a certification supporting a

request for leave under this chapter. The department shall establish good cause exemptions from the certification requirement deadline in the event that a serious health condition of the covered individual prevents the covered individual from providing the required certification within the 90 calendar days.

(2) Certification for a covered individual taking medical leave shall be sufficient if it states the date on which the serious health condition commenced, the probable duration of the condition and the appropriate medical facts within the knowledge of the health care provider as required by the department.

(3) Certification for a covered individual taking family leave because of the serious health condition of a family member of the covered individual shall be sufficient if it states the date on which the serious health condition commenced, the probable duration of the condition, the appropriate medical facts within the knowledge of the health care provider as required by the department, a statement that the covered individual is needed to care for the family member and an estimate of the amount of time that the covered individual is needed to care for the family member.

(4) Certification for a covered individual taking family leave because of the birth of a child of the covered individual shall be sufficient if the covered individual provides either the child's birth certificate or a document issued by the health care provider of the child or the health care provider of the person who gave birth, stating the child's birth date.

(5) Certification for a covered individual taking family leave because of the placement of a child with the covered individual for adoption or foster care shall be sufficient if the covered individual provides a document issued by the health care provider of the child, an adoption or foster care agency involved in the placement or by other individuals as determined by the department that confirms the placement and the date of placement. To the extent that the status of a covered individual as an adoptive or foster parent changes while an application for benefits is pending, or while the covered individual is receiving benefits, the covered individual shall be required to notify the department of such change in status in writing. The department of children and families may confirm in writing the status of the covered individual as an adoptive or foster parent while an application for benefits is pending or while a covered individual is receiving benefits.

(6) Certification for a covered individual taking family leave because of a qualifying exigency shall be sufficient if it includes: (i) a copy of the family member's active-duty orders; (ii) other documentation issued by the Armed Forces; or (iii) other documentation permitted by the department.

(7) Certification for a covered individual taking family leave to care for a family member who is a covered servicemember shall be sufficient if it includes: (i) the date on which the serious health condition commenced; (ii) the probable duration of the condition; (iii) the appropriate medical facts within the knowledge of the health care provider as required by the department; (iv) a statement that the covered individual is needed to care for the family member; (v) an estimate of the amount of time that the covered individual is needed to care for the family member; and (vi) an attestation by the covered individual that the health condition is connected to the covered servicemember's military service as required by this chapter.

(b) Any medical or health information required under this section shall be confidential and shall not be disclosed except with permission from the covered individual who provided it unless disclosure is otherwise required by law. Nothing in this section shall be construed to require a covered individual to provide as certification any information from a health care provider that would be in violation of section 1177 of the Social Security Act, 42 U.S.C. 1320d-6, or the regulations promulgated under section 264(c) of the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191.

(c) A covered individual shall not be eligible to receive family or medical leave benefits if the department finds, through a process it shall establish through regulations, that the covered individual, for the purpose of obtaining these benefits, willfully made a false statement or representation, with actual knowledge of the falsity thereof, or willfully withheld a material fact concerning the facts required to be certified pursuant to this section.

Section 6. (a) For each employee, an employer shall remit to the Family and Employment Security Trust Fund established under section 7 contributions in the form and manner determined by the department. The contribution rate set forth in this section shall be adjusted annually as specified in subsection (e) of section 7.

(b) A self-employed individual who is electing coverage under subsection (j) of section 2 shall be responsible for all contributions set forth in subsection (a) of this section on that individual's income from self-employment.

(c) (1) For medical leave, an employer shall not deduct more than 40 per cent of the contribution required for an employee by subsection (a) from that employee's wages and shall remit the full contribution required under said subsection (a) to the trust fund.

(2) For family leave, an employer may deduct not more than 100 per cent of the contribution required for an employee by subsection (a) from that employee's wages, and shall remit the full contribution required under subsection (a) to the trust fund.

(d) Notwithstanding subsection (c), an employer employing less than 25 employees in the commonwealth shall not be required to pay the employer portion of premiums for family and medical leave. An employer or a covered business entity with a workforce that has more than 50 per cent self-employed individuals for whom the employer shall report the payment for services to such individual on Internal Revenue Service form 1099-MISC shall include those self-employed individuals as employees for the purposes of this section.

(e) (1) For medical leave, a covered business entity shall not deduct more than 40 per cent of the contribution required under subsection (a) to the trust fund for the income paid to each self-employed individual with whom it contracts for services and for whom it must report payments for services to such an individual on Internal Revenue Service form 1099-MISC.

(2) For family leave, a covered business entity shall not deduct more than 100 per cent of the contribution required under subsection (a) to the trust fund for the income paid to each self-employed individual with whom it contracts for services and for whom it must report payments for services to such an individual on Internal Revenue Service form 1099-MISC.

(f) Contributions to the trust fund under this section shall not be required for employees' wages above the contribution and benefit base limit established annually by the federal Social Security Administration for purposes of the Federal Old-Age, Survivors, and Disability Insurance program limits pursuant to 42 U.S.C. 430.

Section 7. (a) There shall be a Family and Employment Security Trust Fund to be administered by the treasurer and receiver general exclusively for the purposes of this chapter. Any sums received under this section shall not be considered revenue of the commonwealth but shall be held in trust for the exclusive benefit of covered individuals eligible for benefits under this chapter and for the administration of the department and shall not be expended, released, appropriated or otherwise disposed of for any other purpose and shall be expended by the director as required by this chapter to pay family and medical leave program benefits to covered individuals eligible to receive benefits and to pay the administrative costs of the department. The trust fund shall consist of: (i) contributions collected pursuant to section 6 together with any interest earned thereon; (ii) property or securities acquired through the use of money belonging to the trust fund together with any earnings of such property and securities; (iii) fines and

penalties collected under this chapter; and (iv) other money received from any source, including any grants, gifts, bequests or money authorized by the general court or other party specifically designated to be credited to the trust fund. Money remaining in the fund at the end of a fiscal year shall not revert to the General Fund. Amounts credited to the trust fund shall not be expended for any purpose other than the payment of benefits to covered individuals eligible for benefits under this chapter, and for the administration of the department and shall not be expended, released, appropriated, or otherwise disposed of for any other purpose. The trust fund shall maintain an annualized amount of not less than 140 per cent of the previous fiscal year's expenditure for benefits paid and for the administration of the department.

(b) The costs of administering the department under this chapter shall not exceed 5 per cent of the amount deposited under subsection (a) for each fiscal year following the initial year benefits have been paid under this chapter. Money in the trust fund may be deposited in any depository bank in which general funds of the commonwealth may be deposited, but such money shall not be commingled with other commonwealth funds and shall be maintained in separate accounts on the books of the depository bank. Such money shall be secured by the depository bank to the same extent and in the same manner as required by the general depository laws of the commonwealth and any collateral pledged for this purpose shall be kept separate and distinct from any other collateral pledged to secure other funds of the commonwealth.

(c) The director shall expend money from the trust fund to provide weekly benefits under section 3. Family and medical leave benefits shall be paid from the trust fund to covered individuals eligible for benefits. An employer's bankruptcy or noncompliance with this chapter shall not interfere with an employee's ability to collect family and medical leave benefits under this chapter. Family or medical leave benefits paid from the trust fund to such an employee may be recovered through bankruptcy proceedings or from the non-complying employer. The director shall institute administrative and legal action to recover family or medical leave benefits paid through the trust fund.

(d) To accumulate funds for the payment of family and medical leave benefits and administrative costs, employers, covered business entities and self-employed individuals shall, unless subject to provisions under section 11, make contributions as required under section 6 and transmit those contributions to the trust fund in the manner determined by the director.

(e) Annually, not later than October 1, the director shall fix the contribution rate set forth in subsection (a) of section 6 for the coming calendar year in the manner described in this subsection. The director shall first certify to the secretary of labor and workforce development and publish, pursuant to section 6 of chapter 30A, the following information: (i) the total amount of benefits paid by the department during the previous fiscal year; (ii) the total amount remaining in the trust fund at the close of such fiscal year; (iii) the total amount equal to 140 per cent of the previous fiscal year's expenditure for benefits paid and for the administration of the department; (iv) the amount by which the total amount remaining in the trust fund at the close of the previous fiscal year is less than or greater than 140 per cent of the previous fiscal year's expenditure for benefits paid and for the administration of the department; and (v) the amount by which the contribution rate set forth in subsection (a) of section 6 shall be adjusted to ensure that the trust fund shall maintain or achieve an annualized amount of not less than 140 per cent of the previous fiscal year's expenditure for benefits paid and for the administration of the department. The contribution rate adjustment, if any, made as the result of the director's certification and report under this subsection shall supersede the rate previously set forth in said subsection (a) of said section 6 and shall become effective on January 1 of the following calendar year.

Annually, not later than October 1, the director shall publish a report providing the following information concerning the family and medical leave program for the previous fiscal year: (i) total eligible claims; (ii) the percentage of such claims attributable to medical leave; (iii)

the percentage of such claims attributable to family leave other than the birth, adoption or fostering of a child; (iv) the percentage of such claims attributable to family leave attributable to the birth, adoption or fostering of a child; (v) the percentage of such claims attributable to military exigency leave; (vi) the percentage of such claims attributable to family leave for a covered service member; (vii) claimant demographics by age, gender, average weekly wage, occupation and the type of leave taken; (viii) the percentage of claims denied and the reasons therefor, including, but not limited to insufficient information and ineligibility and the reason therefor; (ix) average weekly benefit amount paid for all claims and by category of leave; (x) changes in the gross benefits paid compared to previous fiscal years; (xi) processing times for initial claims processing, initial determinations and final decisions; (xii) average duration for cases completed; and (xiii) the number of cases remaining open at the close of such year.

(f) An employer, covered business entity or self-employed individual to whom the treasurer has sent a request for wage, earnings or employment information for an employee or covered individual claiming family or medical leave benefits shall complete and file that information not later than 10 calendar days after the date the request was sent. If such employer, covered business entity or self-employed individual does not respond within those 10 calendar days, then such employer, covered business entity or self-employed individual may be held liable for any related costs incurred by the treasurer.

(g) The state treasurer may, from time to time, invest such monies in the trust fund as are in excess of the amount deemed necessary for the payment of benefits for a reasonable future period. Such monies may be invested in: (i) bonds of any political or municipal corporation or sub-department of the commonwealth; (ii) any of the outstanding bonds of the commonwealth; (iii) invested in bonds or interest-bearing notes or obligations of the commonwealth or of the United States; (iv) bonds or interest-bearing notes or obligations those for which the faith and credit of the United States are pledged for the payment of principal and interest; (v) federal land bank bonds; or (vi) joint stock farm bonds. The investments shall at all times be so made that all the assets of the trust fund shall always be readily convertible into cash when needed for the payment of benefits. The state treasurer shall have the power to dispose of securities or other properties belonging to the trust fund when needed for the payment of benefits.

Section 8. (a) There shall be a department of family and medical leave within the executive office of labor and workforce development which shall be administered by a director appointed by the governor.

(b) The department shall pay medical leave benefits as specified in this chapter and family leave benefits to any covered individual for any of the following reasons: (i) to bond with the covered individual's child during the first 12 months after the child's birth or the first 12 months after the placement of the child for adoption or foster care with the covered individual; (ii) because of any qualifying exigency arising out of the fact that a family member is on active duty or has been notified of an impending call or order to active duty in the Armed Forces; or (iii) in order to care for a family member who is a covered service member. The department, by regulation, shall set time standards for application processing which shall provide for notifying applicants of their eligibility or ineligibility for benefits under this chapter within 14 days of receiving a claim under section 5 and shall pay benefits not less than 14 days after the eligibility determination unless that determination occurs more than 14 days before the onset of eligibility in which case benefits shall be paid as soon as eligibility begins. The department shall not require documentation of certification beyond the requirements established in this chapter.

(c) The department shall pay family leave benefits to any covered individual to care for a family member with a serious health condition as specified by this chapter. The department, by regulation, shall set time standards for application processing which shall provide for notifying

applicants within 14 days of their eligibility for benefits under this chapter and shall pay benefits not less than 14 days after the eligibility determination unless that determination occurs more than 14 days before the onset of eligibility in which case benefits shall be paid as soon as eligibility begins. The department shall not require documentation of certification beyond the requirements established in this chapter.

(d) The department shall notify the employer not more than 5 business days after a claim has been filed under section 5, and shall use information sharing and integration technology to facilitate the disclosure of relevant information or records with the written consent of the individual applying for benefits. The department shall establish by regulation a system for appeals, pursuant to chapter 30A, in the case of a denial of family or medical leave benefits. In establishing such system, the department shall provide for administrative review in an adjudicatory proceeding held pursuant to section 10 of said chapter 30A and 801 CMR 1.02. Judicial review of any decision of the department rendered pursuant to administrative review under this subsection shall be commenced pursuant to section 14 of said chapter 30A within 30 days of the date of the receipt of the notice of such decision, except that such judicial review under this section shall be filed in the district court within the judicial district in which the covered individual lives, or is or was last employed, or in which the individual has a usual place of business and, in such proceeding, the department shall be made a defendant.

(e) Information contained in the files and records pertaining to an individual under this chapter shall be confidential and not open to public inspection, other than to public employees in the performance of their official duties; provided, however, that an individual or authorized representative of an individual may review the individual's records or receive specific information from the records upon the presentation of the individual's signed and dated authorization, which shall remain in force and effect until revoked in writing by such individual.

(f) The department shall conduct a public education campaign to inform workers, employers, self-employed individuals and covered business entities about the availability of family and medical leave benefits, the requirements for receiving such benefits and family and medical leave, how to apply for such benefits and leave and all of the employer's and covered business entity's obligations under this chapter. The department shall prepare and disseminate model multilingual forms to be used by employers, covered business entities, employees and self-employed individuals in the languages required for the workplace notice under subsection (a) of section 4.

(g) The executive office of labor and workforce development shall enforce this chapter and shall promulgate rules and regulations pursuant thereto. An employer or covered business entity who fails or refuses to make contributions as required in section 6 shall be assessed 0.63 per cent of its total annual payroll for each year it so failed to comply, or fraction thereof, in addition to the total amount of benefits paid to covered individuals for whom it failed to make contributions. The rate of assessment imposed by this subsection shall be adjusted annually consistent with subsection (a) of section 6 and subsection (e) of section 7.

(h) This chapter shall be liberally construed as remedial law to further its purpose of providing job-protected family and medical leave and family and medical leave benefits. All presumptions shall be made in favor of the availability of leave and the payment of family and medical leave benefits under this chapter.

Section 9. (a) It shall be unlawful for any employer to retaliate by discharging, firing, suspending, expelling, disciplining, through the application of attendance policies or otherwise, threatening or in any other manner discriminating against an employee for exercising any right to which such employee is entitled under this chapter or with the purpose of interfering with the exercise of any right to which such employee is entitled under this chapter.

(b) It shall be unlawful for any employer to retaliate by discharging, firing, suspending, expelling, disciplining, through the application of attendance policies or otherwise, threatening or in any other manner discriminating against an employee who has filed a complaint or instituted or caused to be instituted a proceeding under or related to this section, has testified or is about to testify in an inquiry or proceeding or has given or is about to give information connected to any inquiry or proceeding relating to this section.

(c) Any negative change in the seniority, status, employment benefits, pay or other terms or conditions of employment of an employee which occurs any time during a leave taken by an employee under this chapter, or during the 6 month period following an employee's leave or restoration to a position pursuant to this section, or of an employee who has participated in proceedings or inquiries pursuant to this section within 6 months of the termination of proceedings shall be presumed to be retaliation under this section. Such presumption shall be rebutted only by clear and convincing evidence that such employer's action was not retaliation against the employee and that the employer had sufficient independent justification for taking such action and would have in fact taken such action in the same manner and at the same time the action was taken, regardless of the employee's use of leave, restoration to a position or participation in proceedings or inquiries as described in this subsection. An employer found to have threatened, coerced or taken reprisal against any employee pursuant to this subsection shall rescind any adverse alteration in the terms of employment for such employee and shall offer reinstatement to any terminated employee and shall also be liable in an action brought under subsection (d).

(d) An employee or former employee aggrieved by a violation of this section or subsections (e) and (f) of section 2 of this chapter may, not more than 3 years after the violation occurs, institute a civil action in the superior court. A party to the action shall be entitled to a jury trial. All remedies available in common law tort actions shall be available to prevailing plaintiffs and shall be in addition to any legal or equitable relief provided in this section. The court may: (i) issue temporary restraining orders or preliminary or permanent injunctions to restrain continued violations of this section; (ii) reinstate the employee to the same position held before the violation or to an equivalent position; (iii) reinstate full fringe benefits and seniority rights to the employee; (iv) compensate the employee for 3 times the lost wages, benefits and other remuneration and the interest thereon; and (v) order payment by the employer of reasonable costs and attorneys' fees.

Section 10. A municipality, district, political subdivision or authority may adopt this chapter upon a majority vote of the local legislative body or the governing body. For the purposes of this section, a vote of the legislative body shall take place in a city by a vote of the city council subject to its charter, in a town by a vote at town meeting, for an authority by a vote of its governing body, in a district, by a vote of the district in a district meeting and by any other political subdivision or instrumentality, by a vote of its legislative body in accordance with its charter or enabling act.

Section 11. (a)(1) Employers may apply to the department of family and medical leave for approval to meet their obligations under this chapter through a private plan. In order to be approved as meeting an employer's obligations under this chapter, a private plan must confer all of the same rights, protections and benefits provided to employees under this chapter, including but not limited to: (i) providing family leave to a covered individual for the reasons set forth in paragraph (1) of subsection (a) and subsection (b) of section 2 for the maximum number of weeks required in paragraph (1) of subsection (c) of section 2, in a benefit year; (ii) providing medical leave to a covered individual for the reasons defined in paragraph (2) of subsection (a)

of section 2 for the maximum number of weeks required in paragraph (1) of subsection (c) of section 2, in a benefit year; (iii) allowing covered individuals to take, in the aggregate, the maximum number of weeks of family and medical leave in a benefit year as required by paragraph (1) of subsection (c) of section 2; (iv) allowing family leave to be taken for all purposes specified in paragraph (1) of subsection (a) and subsection (b) of section 2; (v) allowing family leave under paragraph (1) of subsection (a) of section 2 to be taken to care for any family member; (vi) allowing medical leave to be taken by a covered individual with any serious health condition; (vii) providing a wage replacement rate during all family and medical leave of at least the amount required by paragraph (1) of subsection (b) of section 3; (viii) providing a maximum weekly benefit during all family and medical leave of at least the amount specified in paragraph (2) of subsection (b) of section 3; (ix) allowing family or medical leave to be taken intermittently or on a reduced schedule as authorized by paragraph (A) of paragraph (2) of subsection (c) of section 2; (x) imposing no additional conditions or restriction on the use of family or medical leave beyond those explicitly authorized by this chapter or regulations issued pursuant to this chapter; (xi) allowing any employee covered under the private plan who is eligible to take family or medical leave under this chapter to take family or medical leave under the private plan; and (xii) providing that the cost to employees covered by a private plan shall not be greater than the cost charged to employees under the state program.

(2) In order to be approved as meeting an employer's obligations under this chapter, a private plan must also comply with the following provisions: (i) if the private plan is in the form of self-insurance, the employer must furnish a bond running to the commonwealth, with some surety company authorized to transact business in the commonwealth as surety, in such form as may be approved by the department and in such amount as may be required by the department; (ii) the plan must provide for all eligible employees throughout their period of employment; and (iii) if the plan provides for insurance, the forms of the policy must be issued by an approved insurer.

(b) An employer may provide both family and medical leave coverage through an approved private plan or may provide medical leave coverage using an approved private plan and provide family leave coverage using the public plan or vice versa.

(c) The department may withdraw approval for a private plan granted under subsection (a) when terms or conditions of the plan have been violated. Causes for plan termination shall include, but not be limited to the following: (i) failure to pay benefits; (ii) failure to pay benefits timely and in a manner consistent with the public plan; (iii) failure to maintain an adequate security deposit; (iv) misuse of private plan trust funds; (v) failure to submit reports as required by regulations promulgated by the department; or (vi) failure to comply with this chapter or the regulations promulgated hereunder or both.

(d) An employee covered by a private plan approved under this section shall retain all applicable rights under subsections (e) and (f) of section 2 and under section 9.

(e) A denial of family or medical leave benefits by a private plan shall be subject to appeal before the department and district court as provided by subsection (d) of section 8.

**SECTION 30.** The department of family and medical leave shall: (i) immediately begin to establish the family and medical leave program under chapter 175M of the General Laws; (ii) not later than March 31, 2019, publish for public comment and hearing, pursuant to section 2 of chapter 30A of the General Laws, proposed regulations necessary to establish procedures for the collection of contributions, and for the filing and timely processing of claims for benefits, under chapter 175M of the General Laws; (iii) on July 1, 2019, commence the collection of contributions required under subsection (a) of section 6 of said chapter 175M at an initial rate of 0.63 per cent of the employee's wages; (iv) on January 1, 2021, begin to pay leave benefits pursuant to section 8 of said chapter 175M; (v) not later than October 1, 2021, begin annually

fixing the contribution rate and publish the first annual report pursuant to subsection (e) of section 7 of said chapter 175M; (vi) not later than October 1, 2021, make the initial annual adjustment to the maximum weekly benefit amount pursuant to paragraph (2) of subsection (b) of section 3 of said chapter 175M; and (vi) not later than July 1, 2019, promulgate all regulations necessary to implement said chapter 175M.

SECTION 31. Section 4 shall take effect on July 1, 2019.

SECTION 32. Sections 6, 11, 18 and 23 shall take effect on January 1, 2020.

SECTION 33. Sections 7, 12, 19, 24 and subsection (a) of section 2 of chapter 175M of the General Laws shall take effect on January 1, 2021.

SECTION 34. Subsection (b) of section 2 of chapter 175M shall take effect on July 1, 2021.

SECTION 35. Sections 8, 13, 20 and 25 shall take effect on January 1, 2022.

SECTION 36. Sections 9, 14, 16, 21 and 26 shall take effect on January 1, 2023.

SECTION 37. Except as otherwise specified, this act shall take effect on January 1, 2019.

*Approved June 28, 2018*

## **CHAPTER 148 – FIREFIGHTER INJURED ON DUTY LEAVE**

*Effective January 1, 2019, unless otherwise noted*

Amends G.L. c. 41, § 11F, which provides for paid leave for public safety employees who are injured in the line of duty while they are being treated. Paid leave will now be available to firefighters diagnosed with any cancer presumed to have been incurred in the line of duty under G.L. c. 32, § 94B. It also amends that statute to include breast and reproductive system cancer.

### **CHAPTER 148 OF THE ACTS OF 2018 An Act Further Regulating The Disability Benefits Provided to Certain Police Officers And Firefighters.**

*Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same as follows:*

SECTION 1. Section 94B of chapter 32 of the General Laws is hereby amended by inserting after the word “skin”, in line 3, as appearing in the 2016 Official Edition, the following word:- , breasts.

SECTION 2. Said section 94B of said chapter 32 is hereby further amended by inserting after the word “oral”, in line 4, as so appearing, the following word:- , reproductive.

SECTION 3. Section 111F of chapter 41 of the General Laws, as amended by section 8 of chapter 161 of the acts of 2017, is hereby further amended by adding the following paragraph:-

The presumption established in section 94B of chapter 32 shall apply in determining eligibility for leave without loss of pay under this section when such leave is taken: (i) by a person serving in a position covered by both this section and said section 94B of said chapter 32; and (ii) as a result of a disabling condition of cancer identified in said section 94B of said chapter 32.

*Approved July 20, 2018*

## **CHAPTER 218 – LOCAL TAX EXEMPTIONS FOR VETERANS**

*Effective November 7, 2018*

**§§ 11 and 14 Residency Requirement.** Beginning in FY2020, a veteran seeking exemption under Clauses 22, 22A, 22B, 22C, 22E and 22F and a surviving spouse seeking exemption under Clause 22D must have been domiciled in Massachusetts for at least 2 rather than 5 years before the tax year begins, unless the veteran or servicemember had been domiciled in the state for 6 months before entering the service. Note that the local acceptance option to further reduce the residency requirement Clauses 22, 22A, 22B, 22C, 22D, 22E and 22F to 1 year remains. Note that this option does not apply to the new local acceptance Clause 22H for surviving parents and guardians.

**§§ 12 and 13 Prisoners of War.** Beginning in FY2020, the Clause 22A exemption also applies prisoners of war. Currently, the Clause 22A exemption applies to veterans who lost, or had permanent loss of use of, one hand, foot or eye in the line of duty or who were awarded the Congressional Medal of Honor, Distinguished Service Cross, Navy Cross or Air Force Cross.

**§ 15 Surviving Parents and Guardians.** In a city or town that accepts a new Clause 22H, the surviving parents and guardians of active duty military personnel (including National guardsmen on active duty) who went missing in action and are presumed to have died and active duty military personnel (including National guardsmen on active duty) and veterans who died as a proximate result of injuries sustained or diseases during active duty will be entitled to a full exemption from taxation on their domiciles. The surviving parent or guardian must have lived in Massachusetts for at least 5 years before the tax year begins (or the deceased servicemember or veteran had to have been domiciled in Massachusetts for at least 6 months before entering military service). The first year the exemption can apply is FY2020, regardless of when the servicemember or veteran died. The exemption applies until the parent or guardian dies.

**§ 15 Fiduciaries of Veterans, Veterans' Spouses and Surviving Spouses.** A local acceptance exemption, Clause 22G, treats veterans, spouses of veterans and surviving spouses of veterans otherwise eligible for a Clause 22, 22A, 22B, 22C, 22D, 22E and 22F exemption as the owner of the domicile when legal title is held by a trustee, conservator or other fiduciary for the benefit of the veteran, spouse or surviving spouse. Clause 22G, as originally enacted in 2016, provided that a veteran's spouse who held title to the veteran's domicile as a trustee or conservator and a veteran's surviving spouse who acquired title to the deceased veteran's domicile under a trust or conservatorship, were eligible for any available veteran exemption. However, they were already eligible. The BRAVE Act clarified the language consistent with a technical amendment filed by the Governor in a supplemental budget early in 2018 so it now reflects the intended purpose. A city or town that has already accepted Clause 22G does not need to take any further action for the amended language to apply. Note that this option does not apply to the new local acceptance Clause 22H for surviving parents and guardians.

**§ 17 Veteran Work-off Abatement.** Amends local acceptance G.L. c. 59, § 5N to increase the maximum abatement veterans in cities and towns that have accepted the veteran work-off abatement statute may earn to \$1,500. Previously, the limit was \$1,000. By vote of the legislative body, the maximum abatement may be based on 125 hours of voluntary service at the state minimum wage rate, if higher.

**§ 18 Reservist Motor Vehicle Excise Exemption.** Amends G.L. c. 60A, § 1 to expand eligibility for the motor vehicle excise exemption for vehicles owned and registered or leased by Massachusetts residents who are members of the United States military or the national guard and are on full-time active duty outside Massachusetts for at least 180 continuous days of the excise calendar year. The exemption will now also apply to members of the reserves.

**CHAPTER 218 OF THE ACTS OF 2018 (EXCERPT)**  
**An Act Relative To Veterans' Benefits, Rights, Appreciation, Validation And Enforcement (BRAVE ACT).**

*Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same as follows:*

...

SECTION 10. Section 5 of chapter 59 of the General Laws, as appearing in the 2016 Official Edition, is hereby amended by inserting after clause Seventeenth E the following clause:-

Seventeenth F, Notwithstanding any provision of general or special law to the contrary, an abatement granted pursuant to clause Seventeenth, Seventeenth C, Seventeenth C½ or Seventeenth D may be increased annually at the discretion of a city or town by an amount not to exceed the increase in the cost of living as determined by the Consumer Price Index for such year. This clause shall take effect in a city or town upon its acceptance by such city or town.

SECTION 11. Said section 5 of said chapter 59, as so appearing, is hereby further amended by striking out, in lines 595, 651, 676, 725, 770 and 842, the word “five” and inserting in place thereof, in each instance, the following figure:- 2.

SECTION 12. Said section 5 of said chapter 59, as so appearing, is hereby further amended by inserting after the word “cross”, in line 688, the third time it appears, the following words:- , or who is or was a prisoner of war.

SECTION 13. The first paragraph of clause Twenty-second A of said section 5 of said chapter 59, as so appearing, is hereby amended by adding the following sentence:- For the purposes of this section, the term “prisoner of war” shall mean a regularly appointed, enrolled, enlisted or inducted member of the military forces of the United States who was captured, separated and incarcerated by an enemy of the United States during an armed conflict.

SECTION 14. Said section 5 of said chapter 59, as so appearing, is hereby further amended by striking out, in lines 817 and 881, the figure “5” and inserting in place thereof, in each instance, the following figure:- 2.

SECTION 15. Said section 5 of said chapter 59, as so appearing, is hereby further amended by striking out clause Twenty-second G and inserting in place thereof the following 2 clauses:-

Twenty-second G. In any city or town that accepts this clause, real estate that is the domicile of a person but is owned by a trustee, conservator or other fiduciary for the person's benefit if the real estate would be eligible for exemption under clause Twenty-second, Twenty-second A, Twenty-second B, Twenty-second C, Twenty-second D, Twenty-second E or Twenty-second F if the person were the owner of the real estate.

Twenty-second H. Real estate to the full amount of the taxable valuation of real property of the surviving parents or guardians of soldiers and sailors, members of the National Guard and veterans who: (i) during active duty service, suffered an injury or illness documented by the United States Department of Veterans Affairs or a branch of the armed forces that was a proximate cause of their death; or (ii) are missing in action with a presumptive finding of death as a result of active duty service as members of the armed forces of the United States; provided, however, that the real estate shall be occupied by the surviving parents or guardians as the surviving parents' or guardians' domicile; and provided further, that the surviving parents or guardians shall have been domiciled in the commonwealth for the 5 consecutive years immediately before the date of filing for an exemption pursuant to this clause or the soldier or sailor, member of the National Guard or veteran was domiciled in the commonwealth for not less than 6 months before entering service.

Surviving parents or guardians eligible for an exemption pursuant to this clause shall be eligible regardless of when the soldier, sailor, member of the National Guard or veteran died or became missing in action with a presumptive finding of death; provided, however, that the exemption shall only apply to tax years beginning on or after January 1, 2019. Such exemption shall be available until such time as the surviving parents or guardians are deceased. No real estate shall be so exempt which has been conveyed to the surviving parents or guardians to evade taxation. This clause shall take effect upon its acceptance by any city or town.

SECTION 16. Clause Fifty-fifth of said section 5 of said chapter 59, as so appearing, is hereby amended by striking out the second paragraph.

SECTION 17. Section 5N of said chapter 59, as so appearing, is hereby amended by striking out, in lines 16 and 43, the figure "\$1,000" and inserting in place thereof, in each instance, the following figure:- \$1,500.

SECTION 18. Section 1 of chapter 60A of the General Laws, as so appearing, is hereby amended by inserting after the word "guard", in line 137, the following words:- or reserves.

...

*Approved, August 9, 2018.*

# PROPOSED LEGISLATION 2017-2018 SESSION

## MUNICIPAL MODERNIZATION ACT AMENDMENTS HB 4231 FY2018 Supplemental Budget Filed by the Governor

**§§ 10 and 11 Appointed and Combined Treasurer-Collector.** The Municipal Modernization Act amended G.L. c. 41, § 1B, which provides a mechanism for towns to convert from elected offices to appointed ones. The purpose was to let towns use the same procedure and ballot question to combine the elected positions of collector of taxes and treasurer to a single appointed treasurer-collector position. The Elections Division in the Secretary of State's office raised some issues about the language and how it would be implemented in several situations. These outside sections amend the statute to address those issues. They provide a separate form of ballot question for this option, as well as provisions for transitioning to the appointed and combined position if the question is approved.

**§ 12 Bond and Note Premiums.** The Municipal Modernization Act amended G.L. c. 44, § 20 to give cities, towns and districts a choice in regards to the treatment of premiums (net of issuance costs) received when issuing debt. They can now either apply the premiums to the issuance, thereby reducing the amount needed to borrow, or place them in a separate fund and appropriate them for a capital project. The proposed amendment addresses budgeting and accounting issues discussed with the accounting community, bond counsels and financial advisors in developing implementation guidelines. Note the MA Treasurers and Collectors Association voted to support these changes and Senator Friedman filed a bill with them. See SD 2466.

First, communities are now also getting premiums on temporary debt such as bond anticipation notes (BANs) and due to timing and other issues, treasurers want to reserve them for payment of the first interest payment on the BANs. The amendment makes that change and also lets communities use bond premiums for project costs even where there had been a failure, often perhaps inadvertent or a matter of timing, to include that requirement in the borrowing authorization. The amendment removes the requirement that each premium reserved for capital purposes be appropriated for a purpose for which the municipality could borrow for an equal or greater term than the borrowing and lets the premiums be appropriated for any borrowable purpose. Accounting officers and treasurers found it difficult to have to allocate and tract premiums from multi-purpose bond issuances, which usually have different borrowing terms for the different purposes. Finally, the amendment requires premiums received on a borrowing for which Proposition 2½ debt exclusion has been approved at the time of sale to be used for project costs and reduce the borrowing. This eliminates the need for the community and DLS to adjust the debt exclusion to reflect the true interest costs of the borrowing, which is still required by G.L. c. 44, § 20. If the premium goes to the capital reserve instead, then the municipality has no offsetting financing source for the difference between the budgeted debt service and the allowable debt exclusion. This amendment eliminates that budgeting issue.

**§ 16 Regional School Districts Financing Leases Technical Correction.** The Municipal Modernization Act added a new section 21C to G.L. c. 44 to provide a uniform procedure for authorizing financing leases in cities, towns and districts and providing for refinancing by debt when more advantageous. District for purposes of G.L. c. 44 means a water, sewer and other

improvement district, not a regional school district. See G.L. c. 44, § 1. This new section was not intended to apply to regional school districts because G.L. c. 71, § 16(p) already establishes parameters for allowable lease purchasing arrangements for those districts. However, G.L. c. 44, § 28A makes §§16-28 of Chapter 44 applicable to regional school districts, which now includes the new § 21C. This is an unintended consequence and this amendment would exclude § 21C.

**§ 17 Final Judgments and Awards Technical Correction.** The Municipal Modernization Act amended G.L. c. 44, § 31 to broaden allowable deficit spending for final court judgments to apply to final awards by federal or state adjudicatory bodies with a certification of the city solicitor or town counsel. This is a technical amendment to fix a drafting error that changed the word “counsel” to “council” thereby changing the meaning.

**§ 18 Sale of Real Estate Proceeds Technical Correction.** The Municipal Modernization Act consolidated and updated the many purposes for which cities, towns and districts could borrow inside their debt limits under G.L. c. 44, § 7. The Act also contained a number of sections which made conforming amendments to other statutes that referenced a clause under § 7. A conforming amendment to G.L. c. 44, § 63 dealing with use of real estate proceeds was inadvertently omitted. This proposed conforming amendment would allow the same use of the proceeds as before.

**§ 26 Chapter 61A Solar Technical Correction.** In the Municipal Modernization Act, the legislature added a new section 2A to G.L. c. 61A that permits siting of solar and other renewable energy generating facilities on classified agricultural or horticultural land without loss of eligibility or assessment of a penalty tax. The statute defines the eligible facilities with reference to G.L. c. 25, § 11F, which does not exist. This amendment corrects the reference to G.L. c. 25A, § 11F.

**§ 40 Shared Employees.** This amends the Conflict of Interest Law to address potential violations of the law that arise when cities and towns enter into intermunicipal agreements or members of other regional governmental units. The state conflict of interest law categorizes employees for purposes of the law as state, county or municipal. It does not address regional governmental entities or regional initiatives. Some of these cannot achieve their objectives because of potential conflicts of an employee of one city or town taking actions consistent with the shared goals of the agreement, but that impact the interests of the other municipalities. This had to be addressed by special legislation when Lenox and Lee wanted to share a town administrator. St. 2016, c. 304.

**HB 4231 MUNICIPAL MODERNIZATION ACT AMENDMENTS**  
**An Act Making Appropriations for the Fiscal Year 2018 to Provide for**  
**Supplementing Certain Existing Appropriations and for Certain Other Activities**  
**and Projects.**

...

SECTION 10. Section 1B of chapter 41 of the General Laws, as so appearing, is hereby amended by striking out the first and second paragraphs and inserting in place thereof the following paragraphs:-

Section 1B. Any office or board, except the board of selectmen and the school committee, elected under the provisions of section 1 may become an appointed position or board by a majority vote of the annual or special town meeting and acceptance by the voters of the town at the annual town elections; provided, however, that any vote by an annual or special town meeting taken under the provisions of this section shall take place at least 60 days prior to the acceptance of the voters at the annual town election. Such acceptance by the voters shall be in the form of the following question, to be placed on the official ballot: Shall the town vote to have its elected (Title of office or board) become an appointed

(Title of office or board) of the town? Yes No

SECTION 11. Said section 1B of said chapter 41, as so appearing, is hereby further amended by inserting after the fourth paragraph the following 3 paragraphs:-

For purposes of this section, the positions of town treasurer and collector of taxes, elected pursuant to section 1, may be combined into a single position and become an appointed position in the manner provided in this section. Such acceptance by the voters shall be in the form of the following question, to be placed on the official ballot: Shall the town vote to have its elected offices of treasurer and collector of taxes become an appointed office of treasurer-collector? Yes No If a majority of votes cast in answer to said question is in the affirmative, the elected offices of treasurer and collector of taxes shall be combined and become one appointed office of treasurer-collector in accordance with the provisions of this section.

Any incumbent of the office of treasurer or collector of taxes serving at the time of acceptance by the voters or any individual elected to the office of collector of taxes or office of treasurer at the same election, under the provisions of this section, shall hold said office and perform the duties thereof until the appointment to the office of treasurer-collector is otherwise made under the provisions of this section.

SECTION 12. Section 20 of chapter 44 of the General Laws, as so appearing, is hereby amended by striking out the fifth sentence and inserting in place thereof the following 3 sentences:-

Any premium received upon the sale of notes, less the cost of preparing, issuing and marketing the notes, and any accrued interest received upon the delivery of the notes, shall be applied to the first payment of interest on the note. Any premium received upon the sale of bonds, less the cost of preparing, issuing and marketing them, and any accrued interest received upon the delivery of bonds shall be: (i) in the case of bonds sold by a city or town that have been excluded under section 21C of chapter 59, or bonds sold by a regional school district for which one or more member cities or towns have so excluded their share of the bond, applied by the treasurer to pay costs of the project being financed by the bonds and to reduce the amount authorized to be borrowed for the project by like amount; or (ii) in the case of any other bonds, applied by the treasurer to pay costs of the project being financed by the bonds and to reduce the amount authorized to be borrowed for the project by like amount; or if not so applied, appropriated to pay costs of a project for which the city, town or district has authorized a borrowing, or may authorize a borrowing. Notwithstanding this section, any premium and accrued interest received on account of an issue of bonds, less the cost of preparing, issuing and marketing the bonds, not in excess of \$50,000 may be applied, with the approval of the chief executive officer, for the payment of indebtedness.

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SECTION 16. Section 28A of said chapter 44, as so appearing, is hereby amended by inserting after the word "thereto," in line 7, the following words:- and the provisions of section 21C relating to lease purchase financing agreements.

SECTION 17. Section 31 of said chapter 44, as so appearing, is hereby amended by striking out the word "council," in line 28, and inserting in place thereof the following word:- counsel.

SECTION 18. Section 63 of said chapter 44, as so appearing, is hereby amended by striking out the words "clause (3) of section seven," in line 11, and inserting in place thereof the words:- clause (1) of section 7 to purchase land, or interests in land, or construct or enlarge buildings, including the cost of original equipment and furnishings of the buildings or enlargements.

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SECTION 26. Section 2A of chapter 61A of the General Laws, as so appearing, is hereby amended by striking out the words "chapter 25," in line 6, and inserting in place thereof the following words:- chapter 25A.

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SECTION 40. Section 17 of chapter 268A of the General Laws, as so appearing, is hereby amended by adding the following paragraph:-

This section shall not prevent a municipal employee from receiving or requesting compensation from, or acting as an agent or attorney for, the employee's municipality and one or more other governmental units, as defined by section 4A of chapter 40, in connection with an intermunicipal agreement under said section 4A of said chapter 40, or as otherwise provided by law; provided that the employee is acting within the scope of the employee's duties under the agreement or law.

## **MARIJUANA HOST COMMUNITY AGREEMENTS HB 4284 FY2018 Supplemental Budget Filed by Governor**

**§§ 8 and 9 Marijuana Host Community Agreements.** Section 8 provides that the certain host agreement limitations do not apply to agreements with medical marijuana treatment centers entered into before July 1, 2017. Section 9 provides that all estimated payments under host community agreements with marijuana establishments and medical marijuana treatment centers are available funds for appropriation in the year payable for the purposes specified in the agreements.

### **HB 4284 An Act Making Appropriations for the Fiscal Year 2018 to Provide for Supplementing Certain Existing Appropriations and for Certain Other Activities and Projects.**

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SECTION 8. Said section 3 of said chapter 94G of the General Laws, as so amended, is hereby further amended by striking out the second sentence of subsection (d) and inserting in place thereof the following sentence:- An agreement between a marijuana establishment or a medical marijuana treatment center and a host community may include a community impact fee for the host community; provided, however, that the community impact fee shall be reasonably related to the costs imposed upon the municipality by the operation of the marijuana establishment or medical marijuana treatment center and shall not amount to more than 3 per cent of the gross

sales of the marijuana establishment or medical marijuana treatment center or be effective for longer than 5 years; provided further, however, that these limitations shall not apply to a host community agreement for a medical marijuana treatment center that was entered into before July 1, 2017.

SECTION 9. Said section 3 of said chapter 94G of the General Laws, as so amended, is hereby further amended by adding to subsection (d) the following paragraph:- Notwithstanding section 53 of chapter 44 or any other general or special law to the contrary, a city or town that receives payment pursuant to a host community agreement entered into with a marijuana establishment licensed under this chapter or with a medical marijuana treatment center registered under chapter 94I shall establish a separate account into which the impact fees or other payments shall be deposited. In each fiscal year, the amount of the estimated receipts from the fees and other payments under the host agreement may be appropriated by city or town for the purposes specified in such agreement. Any balance in the account at the end of the fiscal year shall be available for appropriation in the next fiscal year. Any deficit in the account at the end of the fiscal year must be raised by taxation, unless the city or town has otherwise provided, and shall be subject to all applicable provisions of chapter 59.

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## **COMMUNITY PRESERVATION FUND HB 4297 Economic Development Bill Filed by Governor**

**§§ 14-16 Community Preservation Community Housing Purposes.** The Economic Development bill proposed changes to the Community Preservation Act that would expand the uses of community preservation fund monies for the rehabilitation of community housing. Currently, they may only be used to rehabilitate or restore community housing that was acquired or created with community preservation funds. That limitation would be removed, as it was previously for rehabilitation of historic resources and land for recreational use. In addition, community preservation fund monies may be used to “support” community housing. The bill expands the definition of support to include a number of pre-development activities undertaken in connection with a community housing project that may be funded with community preservation monies.

## **HB 4297 An Act Enhancing Opportunities for All.**

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SECTION 14. Section 2 of chapter 44B of the General Laws, as appearing in the 2016 Official Edition, is hereby amended by inserting after the word "affordable," in line 107, the following words:- ; and feasibility studies, land use and development plans, affordable housing plans, site assessments and preparations, including infrastructure installations, appraisals or other pre-development activities undertaken in connection with any acquisition of land for community housing or any acquisition, creation or rehabilitation of community housing.

SECTION 15. Section 5 of said chapter 44B, as so appearing, is hereby amended by striking out, in lines 42 to 43, the words "and support" and inserting in place thereof the following words:- , support, rehabilitation and restoration.

SECTION 16. Said section 5 of said chapter 44B, as so appearing, is hereby further amended by striking out, in line 44, the words "and community housing".

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